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**To:** [Rogers, Bonnie L CIV USARMY CESPL \(US\)](#)  
**Cc:** [Medak, Christine](#)  
**Subject:** [EXTERNAL] EPA Comments PN SPL-2014-00591-BLR  
**Date:** Thursday, July 12, 2018 3:19:53 PM

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Bonnie,

Thank you for the opportunity to comment on Public Notice (PN) SPL-2014-00591-BLR for the Devil's Gate Reservoir Sediment Removal and Management Program in Los Angeles County, CA. The County Flood Control District (Applicant) proposes to excavate approximately 1.7 million cubic yards of sediment from the Reservoir to restore flood and sediment control capacity. The project would be conducted within a 65 acre footprint and would permanently impact 20.9 acres of waters of the U.S. (waters), including 1.5 acres of wetlands. After the initial vegetation and sediment removal, annual maintenance would occur over a 49 acre area. This maintenance area is smaller than the original basin design, which had a capacity of 10.5 million cubic yards and covered a 258 acre footprint.

It is incumbent upon the applicant to clearly demonstrate that the proposed project represents the Least Environmentally Damaging Project Alternative (LEDPA) that achieves the project purpose. The Applicant's proposed project has been reduced from an initial proposal to remove 2.4 million cubic yards of material over a 71 acre footprint. The PN also identifies two other alternatives considered by the applicant involving removal of 2.8 million and 2.4 million cubic yards. Both of these alternatives impacted more waters than the proposed project. However, it is not clear from the PN what level of flood protection is provided by the proposed project, or whether removal of less material would still meet the stated project purpose of increasing water and debris holding capacity for flood control. The Applicant's alternatives analysis should clearly state the level of flood protection needed at the Reservoir and how each alternative performs relative to the stated need. The alternatives analysis will need to clearly demonstrate that impacts have been avoided and minimized to maximum extent practicable, and may need to include an alternative that removes less sediment or impacts a smaller footprint.

To compensate for unavoidable impacts the Applicant has proposed both onsite and offsite mitigation. Offsite compensation would be provided through a permittee-responsible mitigation (PRM) project to enhance and preserve riparian habitat and waters in "Area D" at the Peterson Ranch Mitigation Bank site. The PRM project site would be protected with a conservation easement. Onsite compensation would be provided by enhancing, rehabilitating, and re-establishing non-wetland waters outside the annual maintenance footprint. The PN does not discuss long-term protection for the onsite compensatory mitigation site, but it is our understanding that the Corps and Applicant are still discussing how to provide site protection that complies with the requirements of the Corps-EPA 2008 Compensatory Mitigation Rule (Rule). Section 332.7(a) of the Rule requires that all compensatory mitigation projects be provided long-term site protection, including the use of real-estate instruments when practicable. The Rule does allow flexibility for lands owned by government agencies when real-estate mechanisms are not possible. Such projects may use integrated natural resources management plans, conservation land use agreements, or other similar agreements to provide long-term protection. Devils Gate Reservoir is located on land owned by the

City of Pasadena and the Applicant holds an easement to operate the Reservoir. Because the Applicant does not own the land on which the onsite compensatory mitigation project will be located, a site protection agreement with the Applicant only will not be sufficient. The site protection mechanisms must include both the Applicant and the City of Pasadena. We recommend using a deed restriction in combination with a land use agreement between the USACE and Applicant. If the Applicant proposes to not use a real-estate mechanism for long-term protection, they need to clearly document why such protection is not practicable.

Thank you for considering our concerns and recommendations. Please let me know if you would like to discuss our comments.

Regards,  
Melissa

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